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**DIVERSION AND RESTORATIVE JUSTICE IMPLEMENTATION IN
INDONESIA'S JUVENILE COURT SYSTEM****Ika Darmika**

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ABSTRACT : This study aims to find out and analyze: Regulation and implementation of diversion and restorative justice according to Law Number 11 of 2012 regarding Juvenile Court System, as well the obstacles encountered in implementing diversion and restorative justice in the Regency and City of Bogor. The method used in this study is normative juridical legal research method that is a legal research method which prioritizes secondary data (study of library materials) consisting of: primary, secondary, and tertiary law materials. The study result reveals that diversion and restorative justice as regulated in Law Number 11 of 2012 regarding Juvenile Court System has been in accordance juridically with International Instrument, such as *The Beijing Rules*, new theories in the field of Juvenile Laws and Juvenile Court System, also International Instrument (*ECOSOC Resolution 1987/57*).

Keywords : Child, Diversion, Restorative Justice

INTRODUCTION

In present time Indonesia has renewed the Juvenile Court System, by issuing Law Number 11 of 2012 regarding Juvenile Court System replacing Act Number 3 of 1997 regarding Juvenile Court. The said Law Number 11 of 2012 has been authorized and promulgated on 30 July 2012, and effective after 2 (two) years counted from the day of promulgation.¹ As for the substance regulated in this law, among others, regarding the placement of children undergoing the judicial process can be placed in the Special Guidance Institution for Children (LPKA). The most basic substance of this law is the strict regulation of Restorative Justice and Diversion which is intended to avoid and distance the child from the law process in order for them to avoid stigmatization of children involving in law and it is hoped that they could return naturally to the social environment. Therefore, it is crucial for all parties' participation to

1 Indonesia, Undang-undang tentang Sistem Peradilan Pidana Anak, Undang-undang Nomor 11 Tahun 2012, Lembaran Negara Tahun 2012 Nomor 153, Tambahan Lembaran Negara Nomor 5332. Pasal 108.

actualize such things. This process must aim to build the Restorative Justice which is a diversion process, that is all parties involved in a particular crime together try to solve the problem and also obliges to make everything better with involving the victim, the child, and the people to seek solution for repairing, reconcile, and reassure which is not based on revenge.²

The critics regarding the enforcement of juvenile court system are still flowing. Many circles stated: the implementation of juvenile court enforcement is still far from the inclination to support the actualization of the welfare and best interests of the child. Several studies on juvenile court implementation reveal a fact that the juvenile court process inflicted a negative effect on the child. Imprison punishment for children showed that there is a harmful tendency for the child's mental development in the future. At this time, the majority of children involved with the law, especially those under the juvenile court system, the judge sentenced the deprivation of liberty.

If the children are inside the prison, many of their rights guaranteed by Child protection Laws are not fulfilled. Moreover, with the limited number of Children detention houses and socialization institutions (Lapas), often the children are put together with the adult prisoners.³

This harmful tendency is the result of children involvement in juvenile court process, and caused by the effects of criminal imposition in the form of stigma.⁴

To avoid the negative effects or impacts from juvenile court process towards children, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)* has issued a guide as a mean to avoid such negative effects, that is by giving authority to the law enforcement officer to take policy actions in handling and solving the child offender case without taking the formal way, such as suspend or discontinue/discharge from the juridical process or return/hand over to the society and other form of social services. These actions are called diversion as stated in the said *Rule 11. 1. 11. 2. and 17. 4 SMRJJ (The Beijing Rules)*. With this act of diversion, it is hoped to reduce the negative effect of the children involvement in said juridical process.⁵

The idea of diversion as arranged in SMRJJ (*The Beijing Rules*) as the International standard in enforcing this juvenile justice based on the recommendations from UN experts meeting result

2 *Ibid.* Bagian Penjelasan Umum.

3 Paulus Hadisuprpto. *Pemberian Malu Reintegratif Sebagai sarana Non Penal Penanggulangan Perilaku Delinkuen Anak* (Studi kasus di Semarang dan Surakarta). Disertasi Program Doktor Ilmu Hukum Undip, Semarang, 2003, hlm. 369.

4 *Ibid.*

5 Setya Wahyudi. *Implementasi Ide Diversi Dalam Pembaruan Sistem Peradilan Pidana Anak di Indonesia*. Yogyakarta : Genta Publishing, 2011, hlm. 4.

regarding *Children and Juveniles in Detention : Application of Human Right Standards*, in Vienna, Austria on 30 October until 4 November 1994, has appealed to all countries since 2000, to implementing *The Beijing Rules*, *The Riyadh Guidelines* and *The United Nations Rules for The Protection of Juveniles Deprived of Their Liberty*.⁶

The concept of diversion in *Black's Law Dictionary* translated as *Diversions Programmer*, that is : *A program that refers certain criminal defendants before trial to community programs on job training, education, and the like, which if successfully completed may lead to the dismissal of the charges*.⁷

In the said *Black's Law Dictionary* stated that diversion is the form of transfer process in which is a program that only done at *pre adjudication* level in juvenile court system. This form of case transfer or diversion usually connects with discretion authority own by the law enforcement officer. With definition in the said *Black's Law Dictionary*, it seems that diversion is only own by the police with their discretion authority⁸

According to **Jeff Christian**: restorative justice as quoted by HadiSupeno is a handling of criminal act that is not only viewed from the criminal law perspective, but also linked to the aspect of moral, social, economy, religion and local customs, and various other considerations.⁹

According to Law Number 11 of 2012, restorative justice is the settlement of criminal cases by involving perpetrators, victims, families of perpetrators/victims, and other parties involved to jointly seek a fair solution by emphasizing on recovery to the original state, and not on revenge (Article 1 Number 3).

This diversion and restorative justice are new legal institutions in Indonesia. Therefore, there are still many obstacles in its application. In Criminal Justice System there are known principle of *Integrated Criminal Justice System* which means every law enforcement officer (Police, Prosecutors, Judges, Correctional Institutions) must work in an integrated manner in resolving criminal cases. This integrated principle as of now has not been implemented properly in resolving juvenile justice cases.

For example, in Bogor City in 2018 there was a case of request for diversion to the Public Prosecutor of the Bogor District Attorney that rejected based on the provisions of Article 7 paragraph (2) letter a Law Number 11 of 2012 as follows: Diversion as referred to in paragraph (1) was implemented on the criminal case which is conducted:

6 *Ibid.* hlm. 5

7 Bryan A. Ganer, *Black's Law Dictionary*. Minnesota St. Paul, 2000, hlm. 387.

8 Eva Achyani Zulva, *Pergeseran Paradigma Pemidanaan*. Bandung : Lubuk Agung, 2011, hlm. 158.

9 Hadi Supeno, *Kriminalisasi Anak*. Jakarta : Gramedia Pustaka Utama, 2010, hlm. 196.

a. Threatened with imprisonment under seven (7) years

Then the case was examined in Bogor District Court. The judge of Bogor District Court granted the diversion request and the diversion agreement was successful. From the example of the case, it could be known that the principle of the Integrated Criminal Justice System has not been applied in Juvenile Court System.

Based on the things explained above, therefore the problems to be assessed in this study are: 1) How is the regulation and implementation of diversion and restorative justice according to Law Number 11 of 2012 regarding juvenile court system. 2) What obstacles are encountered in the application of diversion and restorative justice in the City and Regency of Bogor.

Research Method

The method used in this study is normative juridical law research method that is legal research that uses secondary data that is data obtained indirectly from primary source (original) but from library materials (document study). Secondary data in this legal research consisting of: 1) Primary legal materials, namely legal materials that have binding powers, including: 1945 Constitution of the Republic of Indonesia, Law Number 39 of 1999 regarding Human Rights, Law Number 11 of 2012 regarding Juvenile Court System, Government Ordinance Number 65 of 2015 regarding a Guidelines for the Implementation of Diversion and Handling of Children under 12 (twelve) years old. Supreme Court Rules of the Republic of Indonesia Number 4 of 2014 regarding Guidelines for the Implementation of Diversion in Juvenile Court System, Criminal Code (KUHP), Criminal Code Procedures (KUHP) = Law Number 8 of 1998, UN Instruments relating to Law Number 11 of 2012 and diversion, as well as restorative justice, Bogor District Court Decision, etc. 2) Secondary legal materials, namely scientific writing in criminal law, criminal procedural law, and juvenile court system that could explain primary legal material. 3) Tertiary legal materials, namely other writings that could explain the primary and secondary legal materials, for instance: Legal Dictionary, Indonesia Dictionary, etc. There are several approach methods in this legal research namely Statute approach, Case approach, Historical approach, and Conceptual approach.¹⁰

This research used the Statute approach and Case approach. The Statute approach is done by analyzing the law regulating Juvenile Court System, diversion, and restorative justice. The Case approach is done by analyzing Diversion Determination by the Court, the diversion agreement at the level of investigation and prosecution. After data is collected then analyzed it by using qualitative method, namely by doing interpretations according to legal science. For example, authentic interpretation, grammatical interpretation, systematical interpretation, etc.

10 Peter Mahmud Marzuki, *Penelitian Hukum*. Jakarta : Kencana, 2009, hlm. 93.

Result of research and Discussion

The Juvenile Court System in Indonesia right now is regulated in Law 11 Number 11 of 2012 regarding Juvenile Court System, replacing the Law Number 3 of 1997 regarding Child Court. Furthermore, what is mean by Juvenile Court System is the entire settlement process of children dealing with the law, from the stage of investigation until the stage of guidance after undergoing criminal proceedings.¹¹

While Criminal Justice System (Sistem Peradilan Pidana/SPP) according to **Mardjono Reksodipoetro** is: a crime controlling system consisting from institutions, police, prosecutor's office, court and correctional convicts.¹² Furthermore, he propose: that there are four components in criminal justice system (police, prosecutor's office, court, and Lapas), it is hoped that they could work together and build an Integrated Criminal Justice System. If the integration in the operation of the system is not carried out, it is predicted that there would be three losses as follows:

1. Difficulties in self-assessing the success or failure of each agency, in connection with them together.
2. Difficulties in solving the main problem of each agency themselves (as a sub-system of the criminal justice system).
3. Because the unclear distribution of each agency responsibility therefore each agency not paying too much attention to the overall effectiveness of criminal justice system.¹³

The aim of Juvenile Court System according to The Beijing Rules published in Rule 5.1 Aims of juvenile justice.

The juvenile justice system shall emphasize the well being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.¹⁴

The purposes of juvenile justice system according to Child Rights convention (1989). This Convention is approved and opened for signing, ratification and accession by General Assembly Resolution 44/25, 20 November 1989. Applicable on 2 September 1990 pursuant to Article 49.

11 Indonesia, Undang-undang Nomor 11 Tahun 2012, *Op. Cit.* Pasal 1 angka 1.

12 Mardjono Reksodipoetro, *Sistem Peradilan Pidana Indonesia*. (dalam batas-batas toleransi), Pidato pengukuhan Guru Besar Tetap Fakultas Hukum Universitas Indonesia. 1993, hlm. 1.

13 *Ibid.*

14 Abintoro Prakoso, *Pembaruan Sistem Peradilan Pidana Anak*. Yogyakarta : Aswaja Presindo, 2016, hlm. 144.

Article 3:

1. In all actions concerning children, either done by government or private social welfare institutions, courts, government institutions or legislative bodies, the best interests of the child must be taken into consideration.
2. States parties strive to ensure the availability of protection and nurture necessary for the child welfare by taking into account the rights and obligations of the child's parents, legal guardian, or other person who is legally responsible for the child concerned, and for this purpose should take all necessary legislative and administrative actions.
3. States parties must ensure that institutions, agencies and facilities responsible for the nurturing and protection of children adjust to the standards set by authorized officials, especially in the field of safety, health, in numbers and suitability of officers, and also in the presence of good supervision.¹⁵

The purpose of Juvenile Court System according to UN Resolution 45/113 on 14 December 1990, *The United Nations for The Protection of Juvenile Deprived of Liberty*; Justice system for children should uphold the rights and safety and promote physical and mental well-being in children. Imprisonment sentence must be used as a last resort.¹⁶

The purpose of Juvenile Court System according to Law Number 11 of 2012 is to realize a judiciary that truly guarantees the protection of the best interests of children facing the law as the nation's successor.¹⁷

On the basis of the matters described above, it can be seen that the purpose of the juvenile court system in Indonesia as stipulated in Law Number 11 of 2012 is in accordance with the International Instrument governing the Rights of the Child (Convention on the Rights of the Child 1989), The Beijing Rules, UN Resolution 45/113 dated December 14, 1990, and so on.

The most basic substance in Law Number 11 of 2012 is the strict regulation of Restorative Justice and Diversion which is intended to avoid and distance children from the judicial process so that they can avoid stigmatization of children who involve with the law and expected to naturally return to social environment.¹⁸

The idea of diversion is planned in *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (SMRJJ) or *The Beijing Rules* (UN General Assembly Resolution 40/33 on 29 November 1985), whereas diversion is listed in Rule 11.1, 11.2 and

15 Adnan Buyung Nasution, dan A. Patra M. Zen (Penyunting) *Instrumen Internasional Pokok HAM*. Jakarta : Yayasan Obor Indonesia, 2006, hlm. 227.

16 Abintoro Prakoso, *Loc. Cit.*

17 Indonesia, Undang-undang Nomor 11 Tahun 2012, *Op. Cit.* Bagian Penjelasan Umum.

18 *Ibid*

Rule 17.4. This idea of diversion or redirection is to avoid the negative effects of conventional investigation for children in juvenile court system, both the effects of the judicial process and the negative effects of the judicial stigma, then conventional investigations are diverted, and the children are subject to diversion programs. The conditions for diversion are carried out in a juvenile case, namely:

- 1) The child perpetrator's first time on committing a crime
- 2) The child's age that is relatively young.
- 3) The implementation of diversion programs subjected to a child got permission from the parents/guardian, or the child concerned.
- 4) The crime committed, could receive a mild or severe sentence (in certain cases).
- 5) The child has confessed guilty of committing a crime.
- 6) The society support and do not mind of this diversion of investigation.
- 7) If the implementation of diversion failed, therefore the child perpetrator would be return to undergo the formal investigation.

The act of diversion could be conducted by the police, prosecutor, and the court or social institution. The implementation of diversion in every level is expected to decrease the negative effect of children involvement in said crime process.¹⁹ The idea of diversion stipulated in SMRJ and *The Beijing Rules*, regulated that the diversion idea is done limited to a mild child offender case only.

The definition of diversion according to *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)* is the giving of authority to law enforcement officer to take policy actions in handling or resolving child offender case without taking the formal way such as stopping or continuing or discharging from the juridical process or returning or handing over to the society and other form of social services. The implementation of diversion could be done in every level of investigation, as mean to decrease the negative effect of child involvement in said juridical process.²⁰

According to Law 11 of 2012, diversion is the redirection of juvenile case settlement from the court process to process outside the court justice.²¹

The basis of relevance or suitability of the Idea of Diversion with the Theory Study in Juvenile Court System. This relevance or suitability is the basis of scientific justification for the implementation of diversion ideas in juvenile court system in general. With this scientific justification or relevance, it will complement the opinion of the appropriateness and the

19 Barda Nawawi Arief. *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*. Bandung : PT. Citra Aditya Bakti, 1998, hlm. 165.

20 Setya Wahyudi. *Op.Cit.* hlm. 56.

21 Indonesia, Undang-undang Nomor 11 Tahun 2012, *Op. Cit.* Pasal 1 angka 7.

importance of diversion ideas implementation in the renewal of the juvenile court system in Indonesia. There is some theoretically or scientifically of suitability or relevance regarding the implementation of diversion ideas in juvenile court system, namely the implementation of diversion ideas is a special approach in juvenile court system. The implementation of diversion idea in accordance with Abolitionist view in juvenile court system; the implementation of diversion idea as an effort to avoid imprisonment of children; the implementation of diversion idea as alternative sanctions; implementation of diversion idea as a manifestation of progressive or responsive law enforcement.²²

Thus, diversion as stipulated in Law Number 11 of 2012 regarding the Juvenile Court System is juridically in accordance with *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)* and also in accordance with the new theories in the field of juvenile law and juvenile court system.

To implementing diversion, it must be done with restorative justice approach. There are many definitions of restorative justice made by people. In England, **Tony F Marshall** formulated a definition which he claimed was acceptable in international circles, that is: Restorative justice is a process in which the interested parties, solve together on how to reach an agreement after a crime occurs, including its implication in the future.²³

The main purpose of restorative justice is to repair or compensate the damage suffered by the victim, the perpetrators' admission of the injuries suffered by the community as a result of their actions, conciliation and reconciliation of the perpetrators, victims and the community.

Restorative justice aims to empower victims, actors, families, and communities to correct unlawful actions by using awareness and conviction as the basis to improving community life.²⁴

In subsequent developments, the expansion and proliferation of restorative justice received UN support in their 5th Five Years Congress (Geneva, 1975). The UN began to pay attention to compensation for victims of crime, as an alternative to retributive criminal justice. One decade later, this world organization took one step further and concretely protect and enforce the victims' rights thru several international instruments and the terms of implementation, for instance *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly Resolution 30/40)* and *Implementation of Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (ECOSOC Resolution 1987/57)*.²⁵

22 Setyo Wahyudi. *Op. Cit.* hlm. 152.

23 Tony F. Marshall, *Restorative Justice: An Overview* (London : Home Office, 1999), hlm. 5.

24 Paulus Hadisuprpto, *Op. Cit.* hlm. 312.

25 Eriyantouw Wahid. *Keadilan Restoratif dan Peradilan Konvensional Dalam Hukum Pidana*. Jakarta : Universitas Tri Sakti, 2009, hlm. 12.

According to Law Number 11 of 2012, restorative justice is the settlement of criminal case with involving the perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair solution emphasizing on returning to the original state and not on revenge.²⁶

Regarding the application of diversion and restorative justice in the City and Regency of Bogor from the results of the study can be seen as follows:

1. Implementation of diversion in Cibinong District Court in 2015-2017

a. Based on Cibinong District Court annual report in 2015

Juvenile court case requesting for diversion total to 4 (four) cases, therefore it is very small compare to juvenile court cases that has been sentence by Cibinong District Court in 2015 namely as follows: convicted: 13 cases, with actions: 8 cases, with criminal acts and: 11 cases. Amount: 32 cases. Thus the application of diversion for perpetrators of child crime in the 2015 Cibinong District Court was only 12.5%.

b. Implementation of diversion in Cibinong District Court in 2016

Based on Cibinong District Court annual report in 2016:

Juvenile court case requesting diversion total to 10 (ten) cases, and there has been an agreement in Cibinong District Court in 2016. Thus the increasing from the previous year (2015), is only 4 (four) cases. The types of decisions of child criminal cases in the Cibinong District Court in 2016 are as follows: convicted are 11 (eleven) cases, decisions in the form of actions 14 (fourteen) cases, in the form of criminal acts: ten (10) cases, amount: 35 (thirty five) cases, thus the application of diversion to perpetrators of juvenile court case in Cibinong District Court in 2016 was 28.5%.

c. Implementation of diversion in Cibinong District Court in 2017

Based on Cibinong District Court annual report in 2017:

Juvenile court case requesting diversion total three (3) cases, become smaller than the previous years.

2. Implementation of diversion in Bogor State Prosecutor's Office Annual Report 2015-2018

- a. Child Facing the Law (CFL) Bogor State Prosecutor's Office 2015: CFL. Total 7: Inkracht.
- b. 2016: CFL. Total: 9 cases; Inkracht: 6 (six) cases, pre-prosecution: 1 (one) case, drop: 1

²⁶ Indonesia, Undang-undang Nomor 11 Tahun 2012, *Op. Cit.* Pasal 1 angka 6.

(one) case, prosecution: 1 (one) case, drop: 1 (one) case.

- c. 2017: CFL. Total: 12 cases; Inkracht: 8 (eight) cases, pre-prosecution: 1 (one) case, prosecution: 2 (two) cases; successfully diverted: 1 (one) case.
- d. 2018: CFL. Total: 6 (six) cases (January – April 2018); Inkracht: 0, pre-prosecution: 4 (four) cases, prosecution: 1 (one) case, successfully diverted: 1 (one) case.

From these data, it could be known that the implementation of diversion in Bogor State Prosecutor's Office from 2015 – 2018 the total of CFL that was handled is: $7 + 9 + 12 + 6 = 34$ cases, which were successfully diverted was only 2 (two) cases. This is certainly not as expected from Act Number 11 of 2012 regarding Juvenile Court System.

3. Implementation of diversion in Bogor Resort Police in 2016 – 2018

- a. Bogor Resort Police investigator request dated 6 January 2016, Number B/01/1/2016/Lantas to the Head of Cibinong District Court. Diversion agreement dated 6 January 2016, determined by the Vice-Head of Cibinong District Court dated 8 January 2016.
- b. Bogor Resort Police investigator request, dated 9 March 2018, Number B/847/III/2018/Reskrim to the Head of Cibinong District Court, concerning the determination of diversion. Diversion agreement dated 1 March 2018. Determined by the Head of Cibinong District Court dated 9 March 2018.
- c. Bogor Resort Police investigator request dated 26 March 2018, Number B/130/III/2018/Lantas, concerning the request of diversion dated 14 March 2018. Determined by the Head of Cibinong District Court dated 10 April 2018.
- d. Bogor Resort Police investigator request dated 9 April 2018, Number B/1190/IV/2018/Reskrim, concerning determination of diversion to the Head of Cibinong District Court. Agreement of diversion dated 20 March 2018. Determined by the Head of Cibinong District Court, dated 12 April 2018.
- e. Bogor Resort Police request dated 26 September 2018 Number B/502/IX/2018, concerning the request of diversion determination. Agreement of diversion dated 26 September 2018. Determined by the Head of Cibinong District Court dated 04 October 2018.

From the data it could be known that the Head of Cibinong District Court was very quick to respond to requests for diversion from Bogor Resort Police. This shows that the judges and the Head of Cibinong District Court have understood the purpose of Law Number 11 of 2012 regarding Juvenile Court System.

Diversion and restorative justice are new things in Indonesia, thus it is reasonable if in its application there are obstacles, for example in Bogor, law enforcement officers (Police, Prosecutors, Judges, Penitentiary) have not yet show an integrated cooperation in implementing Law Number 11 of 2012 concerning Juvenile Court System. Funding problems are also an obstacle, for example funds for community research (Litmas), funds to invite parties related to the application of diversion are also not yet available, etc.

Conclusion

In criminal justice law there is a notable principle called Integrated Criminal Justice System which means there are four components in criminal justice system (police, prosecutors, judges, and penitentiary) that are expected to work together and form an Integrated Criminal Justice System. If the integration in the operation of the system is not carried out, there will be estimated to be three losses as follows: 1) Difficulties in self-assessing the success or failure of each agency, in connection with them together. 2) Difficulties in solving each agency main problems (as a sub-system from criminal justice system). 3) Because each agency's responsibilities are often less clearly less divided, each agency does not pay too much attention to the overall effectiveness of the criminal justice system.

The purpose of juvenile court system according to Law Number 11 of 2012 is to manifest a justice which truly guaranteed the protection of the best interests of children facing the law as nation's next generation. The purpose of the said juvenile court system is in accordance with what is regulated in the International instruments *The Beijing Rules: rule 5.1.* and with Children Rights Convention (1989): UN General Assembly Resolution 44/25, 20 November 1989, effective 2 September 1990, and also in accordance with UN Resolution 45/11 dated 14 December 1990.

The most basic substance in Law Number 11 of 2012 is in accordance to what listed in *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (SMRJJ)* or *The Beijing Rules* (UN General Assembly Resolution 40/33 dated 29 November 1985), whereas diversion listed in *Rule 11. 1. 11. 2 and Rule 17. 4.*

This idea of diversion or redirection is to avoid the negative effect of the convention examination of juvenile court to children, whether the negative effect of juridical process or the negative stigma of it, thus the conventional examination is diverted, and for those children bear the diversion programs. The ideas of diversion regulated in SMRJJ or *The Beijing Rules*, controlled that diversion could be done not only limited to a mild juvenile crime.

Theoretically or scientifically, there are several suitability or relevance regarding the implementation of diversion idea in the juvenile court system, namely that the implementation

of diversion idea is a special approach in juvenile court system. The implementation of diversion idea is in accordance with the *Abolitionist* view in juvenile court system; Implementation of diversion idea as an effort to avoid *Imprisonment* to children. Implementation of diversion idea as an alternative sanction; Implementation of diversion idea as the manifestation of progressive or responsive law enforcement. Therefore, diversion as regulated in Law Number 11 of 2012 regarding Juvenile Court System juridically is in accordance with *The Beijing Rules*, also in accordance with new theories in the field of juvenile law and juvenile court system. Regarding restorative justice according to Law Number 11 of 2012 also has been in accordance with International Instrument (*ECOSOC Resolution 1987/57*).

Concerning the application of diversion and restorative justice in the City and Regency of Bogor are as follows: 1) Cibinong District Court: In 2015 the total of juvenile crime that has been sentence are: 32 cases with the one that successfully diverted are only 4 (four) cases. Thus it is still very small. 2) In 2016: the total of juvenile crime in Cibinong District Court: diverted: 10 (ten) cases. The total of juvenile crime that has been sentence by Cibinong District Court are: 35 cases. Thus the total of juvenile crime that has been diverted in Cibinong District Court in 2016 also still very small compared with the juvenile crime that has been sentence by Cibinong District Court. 3) In 2017: in Cibinong District Court, the juvenile crime that request diversion: only 3 (three) cases.

The implementation of diversion in Bogor State Prosecutor's Office: In 2015 – 2018: CFL. Total: 34 cases. Diversified: 2 cases. Thus the implementation of diversion in the level of prosecution is also very small.

The implementation of diversion at the investigation level (Bogor Resort Police) in 2016 – 2018, Bogor Resort Police have diversified in juvenile crime: 5 cases. Thus the diversification of juvenile crime by the Bogor Resort Police investigator is also very small.

In this study found various obstacles in the implementation of diversion in the City and regency of Bogor, including: in Bapas Bogor: there still no fund available for community research (Litmas), at the investigation level there is still no fund available to invite parties related to the implementation of diversion, there is still no integrated collaboration between the law enforcement (police, prosecutors, judges and penitentiary) in handling diversion, etc.

Recommendation

There is a need for integrated collaboration between the law enforcement (police, prosecutors, judges and penitentiary) in handling diversion. In order to avoid multi interpretation of several Articles in Law Number 11 of 2012 it is important to give explanation and case examples.

References

- Arief, Barda Nawawi, *Some Aspects of Criminal Law Enforcement and Development Policy*. Bandung : PT. Citra Aditya Bakti, 1998.
- Ganer, A. Bryan, *Black's Law Dictionary*. Minnesota St. Paul, 2000.
- Hadisaputro, Paulus, *Giving Embarrassed Reintegrative As a Non-Penal Facility for Dealing with Child Delinkuen Behavior. (Case studies in Semarang and Surakarta)*. Dissertation of the Diponogoro University Doctor of Law Science Program, Semarang, 2005.
- Marshall, F. Tony, *Restoratif Justice : An Overview*. London : Home Office, 1999.
- Marzuki, Peter Mahmud, *Legal Research*. Jakarta : Kencana, 2009.
- Nasution, Adnan Buyungdan A. Patra. M, Zen. (Editor), *Main International Instrument of Human Rights*. Jakarta : Yayasan Obor Indonesia, 2006.
- Prakoso, Abintoro, *Renewal of Juvenile Court System*. Yogyakarta : Aswaja Presindo, 2016.
- Reksodipoetro, Mardjono, *Criminal Justice Law in Indonesia*, (in tolerance limitation). Speech for Inauguration of the Permanent Professor of the Faculty of Law, University of Indonesia 1993.
- Supeno, Hadi, *Child Criminalization*. Jakarta : Gramedia Pustaka Utama, 2010.
- Wahyudi, Setya, *Implementation of Diversion Idea in the Renewal of Juvenile Court System in Indonesia*. Yogyakarta : Genta Publishing, 2011.
- Wahid, Eriyanto, *Restorative Justice and Conventional Justice in Criminal Law*. Jakarta : Universitas Tri Sakti, 2009.
- Child Rights Monitoring Foundation and UNICEF, Workshop on Strengthening Children's Rights Activities. Activity Report, Wisma PKBI II Jakarta.
- Zulva, Eva Achyani, *Shift in the Criminal Paradigm*. Bandung : Lubuk Agung, 2011.
- Indonesia, Law regarding Juvenile Court System, Law Number 11 of 2012, State Gazette of 2012 Number 153, Addition of State Gazette Number 332.
- , Government Ordinance Number 65 of 2015 regarding the Guidelines for Diversification and Handling of Children under 12 years old.
- , Republic of Indonesia Supreme Court Rules Number 4 of 2014 regarding the Guidelines for Diversification in Juvenile Court System

-----, Republic of Indonesia General Attorney's Regulation Number Per-006/A/JA/04/2015 regarding the Diversification at prosecution level.

-----, Criminal Code (KUHP)

-----, Civil Law (KUHAP), Law Number 8 of 1981. State Gazette of 1981 Number 76, Addition of State Gazette Number 3209.